



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 19925190

Date: NOV. 2, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

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<sup>1</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

The record indicates that Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that he intends to work in the United States as a sports coordinator and trainer. He asserted that he plans “to provide fitness consultations and to lead expansions for academy networks and companies in the sports segment.” The Petitioner also stated that his undertaking involves opening “a sports consultation company through which I can facilitate the cross-border expansion of Brazilian sports companies and academies in their entrance to the U.S. markets.” He further explained that he founded a “company, [REDACTED] to offer training and instruction in health, fitness, and soccer.” In addition, the Petitioner stated:

My approved football academy within the [REDACTED] community already has approximately 40 children. The project includes a private soccer field within a condominium, and through expansion we plan to serve about 200 children and assemble a team of 8 coaches. With the project consolidated in the community, the plan will be to open new locations, serving students within elementary, middle, and high schools.

I also have a company that offers fitness training inside the condominiums, with a recent project that aims to offer fitness classes outside of the gym, in open environments (boot camps), creating even more opportunities and potential jobs for athletic trainers.

Furthermore, the Petitioner noted that his proposed endeavor includes “creating a football Academy that reaches the player who craves physical activity as a means of social interaction and competitive satisfaction, focusing on the level of development and increased competition, where we can train and guide the athlete towards a career plan.” He added that he “will offer after school programs and develop a training center to train coaches, creating opportunities for other professionals in the field, such as psychologists, nutritionists, physiotherapists, and others related to sport.”

The Petitioner presented the “Articles of Organization” and Florida business registration information for [REDACTED]. In addition, he submitted the company’s operating agreement, Internal Revenue Service employer identification number, certificate of liability insurance, and insurance policy.

The record includes information about the U.S. sports coaching industry, the benefits of physical activity, the demand for athletic trainers in New York, the prevalence of obesity in the United States, the potential for youth sports to improve childhood outcomes, and the value of a strong coach-athlete relationship. Additionally, the Petitioner provided articles discussing the occupational outlook for

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

athletic trainers, athletes, coaches, and umpires; resources for coaching social and emotional skills in youth sports; the positive effects of sports on children; adolescent health risks and protective factors; the benefits associated with well-trained coaches; and athletic trainers as contributors to public health practice. He also submitted information about the value of athletic trainers, the U.S. Department of Health and Human Services' "National Youth Sports Strategy," qualities that make coaches great teachers, the ways sports help at-risk youth, and athletic trainers' role in preventing injury and illness. The record therefore shows that the Petitioner's proposed work as a sports coordinator and trainer has substantial merit.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not provided supporting evidence showing that his undertaking "will have broader implications, or national or global implications" in his field. Additionally, the Director indicated that the Petitioner had not demonstrated that his proposed work "has significant potential to employ U.S. workers," offers "substantial positive economic effects," or "will broadly enhance societal welfare."

In his appeal brief, the Petitioner points to his educational qualifications, coaching ability, soccer expertise, and 14 years of work experience in athletics. The Petitioner's education, skills, knowledge, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner argues that his "proposed endeavor will have broad implications, as it is national in scope, and will produce significant national benefits, due to the ripple effects upon nationally important issues, such as health of children in particular, due to the rising obesity rate, which has been deemed as an issue of national importance by the U.S." He claims that his undertaking "will help to develop athletic abilities and physical strength of young athletes in the sport of soccer, the popularity and commercial success of which has increased tremendously in the U.S. in recent years." The Petitioner further contends that his proposed work stands "to facilitate the cross-border expansion of Brazilian sports companies and soccer academies into the U.S. market. This will not only contribute to improving the health and well-being of all Americans, but will also generate many direct and indirect jobs within the coming years." He also asserts that his endeavor fills "an occupation that is expected to grow by 19%, faster than the average for all occupations in the United States,"<sup>3</sup> counteracts "American children's and young adolescents' increasingly sedentary lifestyle, and high risk for childhood obesity," and provides "social benefits to at-risk youth in underserved communities who will benefit from his guidance and mentorship."

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an

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<sup>3</sup> The Petitioner, however, has not established that his proposed endeavor stands to impact or significantly reduce any national shortage resulting from this projected job growth. Shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. While the Petitioner’s documentation reflects his intention to offer athletic training and instruction to his clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. For example, he has not demonstrated that his involvement as a sports coordinator and trainer stands to affect U.S. soccer or public health interests at a level consistent with having national importance. Nor has he shown that his proposed endeavor as a soccer academy coordinator is at a level that would offer national implications in his sport, or that the implications of such work stand to impact his field more broadly. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his sports training business and its clientele to impact U.S. soccer or societal health and welfare more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from his projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.